

DECISION



11480
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-192773.2

DATE: September 21, 1979

MATTER OF: ECI Air-Flyte Corporation

Subcontractor Protest Alleging Acceptance of Late Bid by Prime Contractor

DIGEST:

Potential subcontractor's protest will not be considered because protest does not fall within any of the limited criteria under which GAO will consider protests against award of subcontracts.

ECI Air-Flyte Corporation (ECI) protests the award of a subcontract to another bidder by Turner Construction Company (Turner), the prime contractor under contract 100-76-0050 with the Department of Health, Education and Welfare (HEW) for the construction of an ambulatory care research facility. ECI contends that Turner accepted a late bid for a pneumatic trash and linen system and that the low bidder is not qualified to perform.

In Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166, we held that our Office would only consider protests concerning the award of subcontracts by prime contractors in certain circumstances. Basically, these circumstances fall into five categories: (1) where the prime contractor is acting as a purchasing agent of the Government; (2) where the Government's active or direct participation in the selection of the subcontractor has the net effect of causing or controlling the rejection or selection of a potential subcontractor, or has significantly limited subcontract sources; (3) where fraud or bad faith in Government approval of the subcontract award or proposed award is shown; (4) where the subcontract award is "for" an agency of the Federal Government, and (5) where the question

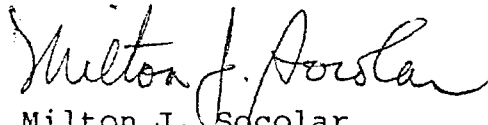
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concerning the award of a subcontract is submitted by an official of a Federal agency entitled to an advance decision from our Office.

In the present case we are informed that the selection of the subcontractor was the choice of the prime contractor. No allegation of fraud has been made. Since none of the other exceptions cited above appear to be present here this is not the type of subcontract case where we would assume jurisdiction.

The protest is dismissed.


Milton J. Socolar
General Counsel

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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-192773.2

September 21, 1979

The Honorable Harrison A. Williams, Jr.
United States Senate

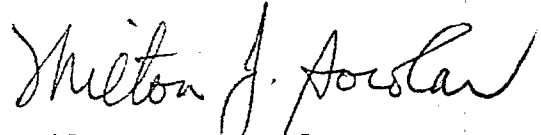
Dear Senator Williams:

We refer to your interest in the protest of ECI Air-Flyte Corporation concerning the award of a sub-contract by Turner Construction Company under prime contract 100-76-0050 with the Department of Health, Education and Welfare.

By decision of today, copy enclosed, we have dismissed the protest.

Also enclosed is the correspondence from your constituent, Mr. A. J. Gregory of Fairfield, New Jersey, who requested information on this matter.

Sincerely yours,



Milton J. Socolar
General Counsel

Enclosures - 2

